IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

DEFENDANT SHERIFF WARREN'S
RESPONSE TO MOTION TO SHORTEN TIME AND
MOTION TO PERMIT THIRD PARTY DISCOVERY

COMES NOW Sheriff David Warren, the Defendant in the above-styled cause, by and through his counsel of record, and responds to Plaintiffs' Motion to Shorten Time for Discovery Responses (Doc. 32) and Motion to Permit Third-Party Discovery (Doc. 33) as follows:

1. Plaintiffs Reach One, Teach One of America, Inc. ("Reach One") and Macon County Investments, Inc. ("MCII") filed their Complaint on March 9, 2006 seeking injunctive relief and a declaratory judgment against Sheriff Warren. Plaintiffs' Complaint asserts a single claim of violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. (Comp. at ¶ 1, 19.)

2. At the time the Complaint was filed, the Plaintiffs also filed an Application for Preliminary Injunction and Expedited Hearing (Doc. 3) and a Motion for Early Commencement of Discovery (Doc. 2). In their pleadings and their arguments before

the Court, the Plaintiffs proposed limited discovery including a request for admissions to Sheriff Warren, request for production of Sheriff Warren, and his deposition in order to facilitate an expedited hearing on the injunctive relief sought by the Plaintiffs.

3. On June 26, 2006 the Court entered an Order (Doc. 19) allowing the limited discovery requested by the Plaintiffs. The Court set a deadline of August 31, 2006, by which date all discovery was to be completed. (Doc. 19, pg. 9).

4. Both parties have exchanged written discovery and responses have been submitted; however, the responses submitted by the Plaintiffs were untimely and seriously deficient and have impeded Sheriff Warren's ability to take the two depositions he has been allowed by the Court's order. Specifically, Sheriff Warren sought copies of certain forms submitted by Reach One to the Internal Revenue Service, a copy of all minutes from meetings of Reach One's Board of Directors for the last five years, and a copy of Reach One's federal and state tax return filings for the last five years. Plaintiffs objected to the production of these documents on the grounds that the documents were broad, vague, unduly burdensome, not calculated to lead to discoverable information and on the basis that the information was not required from other Class B bingo license applicants. Plaintiffs also claimed that all of the minutes of the meetings of the Board of Directors of Reach One had been destroyed in a fire in April 2004. With the exception of April 2006 minutes Reach One has failed to produce any minutes, although its President admitted to the existence of minutes taken subsequent to the April 2004 fire. The minutes of the April 2006 meeting are deficient in that it does not attach the exhibit referred to thereon. Plaintiffs failed or refused to produce documents timely and served the responses less than two days before the depositions were to take place. These

deficiencies are presently the subject of a motion to compel and the Plaintiffs' depositions may have to be reopened and completed at such time as the Court may permit.

5. The Plaintiffs now return to this Court seeking broader, additional discovery of the Defendant and a third party bank. The Plaintiffs claim that this additional discovery is "essential" to support their claims and at the "heart" of the "merits of their claims", but that the Court's order did not provide for "follow-up" discovery. (Doc. 33.)

6. The Defendant agrees that additional discovery may be necessary for both sides in this action. Indeed, based upon the depositions of Plaintiffs' corporate representatives, the Defendant will need to seek additional discovery of the Plaintiffs and various third parties. Namely, as a result of testimony offered by the Plaintiffs' corporate representatives, Defendant anticipates that it will be necessary to take the depositions of at least ten (10) more witnesses and anticipates propounding at least twenty-five (25) more requests for production of documents referred to by the Plaintiffs in their depositions.

7. Moreover, not only will the Defendant seek discovery from the third party bank from which Plaintiffs seek to subpoena records, it is likely that Sheriff Warren will insist on the deposition of a custodian of records. It is clear to Sheriff Warren that the Plaintiffs have attempted to perpetuate a fraud on the Court and this Defendant. The Defendant will need additional discovery in order to establish this fraud and the Plaintiffs likely participation in such fraud. However, it is unlikely that such discovery can be completed within the deadline requested by the Plaintiffs and established by the Court.

8. Finally, it is clear from the depositions of Plaintiffs' corporate representatives that the grounds upon which this Court based its decision to permit expedited discovery do not in fact exist. In their Application for Preliminary Injunction and Expedited Hearing ("Application"), Plaintiffs allege that:

> 10. Upon information and belief that the Defendant Sheriff would be granting the application, the Plaintiffs began constructing the facility and purchasing equipment for the operation of a Class B Bingo facility in Macon County.
>
> 11. The Plaintiffs have suffered and will continue to suffer irreparable harm if this injunction is not granted. Business reputation, goodwill, and income are being diminished every day that the purchased equipment is not in use and the land remains undeveloped. Further, the public service goals of the MCI/Reach One, Teach One venture are being frustrated because no funds are being generated.

Application at pg. 2 at ¶10 and pg.3 at ¶11 (*sic*). However, MCII's corporate representative admitted in his deposition that MCII does not have any assets, does not have any liabilities, does not own the land on which it proposes to construct a facility, has not begun construction of a facility, has not purchased any equipment, has not borrowed any money, and has never had a bank account. Reach One's corporate representative also admitted that it does not have any assets, does not have any liabilities, does not have any expenses, has never had any contributions from third parties with the exception of one donation made by Henry Frank Thomas, III (who appeared as MCII's corporate representative), and has never received any grants.

7. As a result, the Defendant opposes any additional discovery by the Plaintiff or the shortening of time for such discovery. The Plaintiffs requested the limited and expedited discovery ordered by the Court. It is apparently clear to both parties now that additional discovery will be needed to establish their respective claims in this action. Contrary to the allegations in their Complaint, Amended Complaint, and Application for

Preliminary Injunction, the Plaintiffs have not and are not suffering any harm which would necessitate expedited discovery. Therefore, there is no need to truncate the discovery process. Accordingly, the Defendant requests that the Court set a scheduling conference with the parties to permit additional time and additional discovery as may be necessary for the parties to properly prepare and present their claims. The Plaintiffs' motions should be denied at this time pending the scheduling conference with the Court.

Respectfully submitted,

/s/ Fred D. Gray, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following counsel of record via the court's CM/ECF electronic filing system, on this the 20th day of August, 2006:

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/s/ Fred D. Gray, Jr.
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